Supreme Court, U.S.
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No. 96-117

Supreme Court of the United States

October Term, 1995

CHESTER MAXWELL, GRACE MAXWELL BROWN, JEWELL E. CAUDLE, WAUNETTE JOHNSON, JAMES A. MAXWELL, PATSY DAVENPORT, and BILL MAXWELL,

Petitioners,

vs.

SAMSON RESOURCES COMPANY,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals Division No. III State of Oklahoma

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REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 15(6) of the Rules of this Court, petitioners (hereinafter referred to as "the Maxwells") respectfully reply to the new points raised by respondent Samson Resources Company (hereinafter referred to as "Samson") in the brief in opposition to the petition for writ of certiorari filed by the Maxwells.

I

Samson Had a Statutory Duty to the Maxwells Which Could Not Be Shifted to Kerr McGee

The Maxwells are the heirs of George S. Maxwell who died intestate February 4, 1960. Samson is the operator of the Kinnikin gas well which was drilled on lands in which George S. Maxwell owned an undivided interest in the minerals. Samson entered into an agreement with Arkla Energy Resources, the initial purchaser of production from the Kinnikin well, whereby Arkla paid all proceeds from the sale of production from the well to Samson and Samson agreed, pursuant to 52 Okla. Stat. §540 (modified and recodified as 52 Okla. Stat. §570.10), to pay the proceeds to persons legally entitled to receive them. As the operator of the Kinnikin well, Samson also had a statutory duty pursuant to 52 Okla. Stat. §§541-47, "the Sweetheart Gas Bill" (modified and recodified as 52 Okla. Stat. §§581.1-581.10) to market the Maxwells' share of the gas produced from the Kinnikin well.

In its brief in opposition to the Maxwells' petition, Samson raises new points in an attempt to justify the breach of its statutory duties to pay the Maxwells their proportionate share of the proceeds from the Kinnikin well. In the Statement of the Case, Samson purports to correct a "mis-statement of

fact" in the Maxwells' petition regarding the reason the Maxwells did not receive proceeds from the sale of gas from the Kinnikin well. Samson tries to place the responsibility on Kerr McGee by contending that the Maxwells claimed to own the same mineral interest in the well that Kerr-McGee Corporation, as lessee, and F. E. Allen, as lessor, also claimed to own. Samson acknowledges that the preliminary title opinion for the Kinnikin well, which was prepared for Samson in January of 1983, revealed a defect in the title of F. E. Allen and Kerr-McGee. The preliminary title opinion described the instruments by which Louise Maxwell, the wife of George S. Maxwell, and Buster Maxwell, the son of George S. Maxwell, conveyed *their* interests in the mineral property. As a requirement of the title opinion, Samson was advised that it should determine whether there were other successors/heirs of George S. Maxwell in addition to Louise and Buster Maxwell. Samson ignored this advice in January 1983 and again in March 1984 when the same requirement was repeated by the attorney who prepared the division order title opinion.

In August 1985, Samson received the Journal Entry of Judgment quieting the Maxwell's title to their interest in the mineral property and thus had actual notice that the Maxwells' interest in the Kinnikin well had been judicially determined. However, Samson did not contact the Maxwells about marketing their share of the gas produced from the well. Samson withheld information from the Maxwells about the proceeds of production sold from the well. Despite repeated demands for payment of all monies owed to them, Samson did not pay the Maxwells anything for their working interest share of the proceeds of production from the well. Samson did not even pay the Maxwells their royalty interest share of production until after the Maxwells filed their lawsuit in March of 1987. Samson did not pay the Maxwells any of their

working interest until May of 1993. Samson held the Maxwell's money and instigated systematic efforts to keep the working interest portion for itself. See App. 47a-55a in which the trial court stated:

> Extensive evidence was presented as to the acts of the parties and their dealings with each other at the original hearing and the Court has reviewed the testimony presented at that time. Much of that testimony, particularly as it dealt with any wrongful actions, was repeated in the rehearing of this case and extensive arguments were made based on the testimony presented.

The court concluded that the Maxwells are entitled to treble damages based on the misconduct of Samson. The court referred to Samson's acts and omissions, including those stated above, which supported the finding that "Samson negotiated with the plaintiffs in bad faith, ..." App. 54a.

Samson argues that it failed to pay the Maxwells their proportionate share of the proceeds of production from the Kinnikin well because Kerr-McGee had warranted its title in the Joint Operating Agreement and it was Kerr McGee's responsibility to cure the title defect. Samson made this same argument in the courts below. In *Maxwell v. Samson Resources Co.*, 848 P.2d 1166 (Okla. 1993), the Oklahoma supreme court rejected Samson's argument that the Joint Operating Agreement obligated Kerr-McGee, not Samson, to cure the subject title defects. The court stated:

> This agreement, of course, cannot excuse Samson from its duties as operator under the

> *provisions of the* Oklahoma statutes. *Id.* at 1168 (footnote omitted).

App. 32a. There is no justification for Samson's breach of its statutory duties to market the Maxwells' share of gas produced from the Kinnikin well and pay the Maxwells their proportionate share of the proceeds from the sale of production from the well. Samson's purported clarification of the facts is only a self serving attempt to avoid responsibility for its failure to abide by its own agreement and the law of the State of Oklahoma.

II

Samson's Argument that Repeal of the Treble Damages Provision of the Statute Should Be Applied Retroactively Is Not Supported By Oklahoma Law

In its brief in opposition to the Maxwells' petition, Samson raises the argument that the repeal of the treble damages provision of "the Sweetheart Gas Bill" applies retroactively to the Maxwells' claims. Samson's argument is contrary to Oklahoma law which provides that statutory limitations on damages, as well as statutory enhancement of damages, are changes in substantive rights and not mere remedial changes subject to retroactive application. *Thomas v. Cumberland Operating Co., 569 P.2d 974 (Okla. 1977).*

In the case of *Majors v. Good*, 832 P.2d 420 (Okla. 1992), the issue before the court was whether the amended version of the punitive damages statute, 23 Okla. Stat. §9, which provided for a cap on the amount of punitive damages, should be applied retroactively. Even though there was no dispute that the plaintiff's cause of action arose before the

punitive damages statute was amended, the trial court limited the amount of punitive damages that could be awarded against the defendant to the amount of the actual damages, based on the amendment to the statute. In its opinion reversing the trial court, the Oklahoma supreme court first looked to its decision in *Thomas v. Cumberland Operating Co.,supra,* and stated:

> The issue in *Thomas* was whether Okla. Stat. tit. 12 §1055 (Supp. 1975), should be applied retroactively. Section 1055 increased the benefits for wrongful death. This Court held that '[s]tatutory increases in damage limitations are changes in substantive rights and not mere remedial changes.' *Thomas*, 569 P.2d at 976. Of no less effect are the statutory limitations on all recoverable damages. Limitations on damages, whether actual or punitive, can constitute changes in substantive rights. We hold that the 1986 amendment to section 9 should be applied prospectively only.

Majors v. Good, supra at 422. The case of *Mantha v. Liquid Carbonic Industries*, 839 P.2d 200 (Okla. App. 1992) (certiorari denied Oct. 6, 1992) involved the substantive right of an employee to file a wrongful discharge action under the Workman's Compensation Act. The right was established by 85 Okla. Stat. §5 which permits recovery of actual and punitive damages. In 1986, the legislature amended 85 Okla. Stat. §6 to provide that an award of punitive damages shall not exceed $100,000. In the *Mantha* case the employer argued that the cap applied retroactively. The court held that retroactive limitation of punitive damages was not a correct assessment of the law.

> The Workers' Compensation Act provides a cause of action which would not otherwise exist, and §6 was added to qualify the damages available. Even though the statute has been amended, subsequent to the accrual of Mantha's cause of action, only the statute in effect at the time of his termination is applicable to the facts in this case. The provision for damages is substantive and not procedural, so a retroactive application of the statute as amended would have the effect of eliminating the plaintiff's cause of action. The record adequately supports the jury's award of punitive damages to Mantha.

Id. at 205.

The Oklahoma supreme court construed the provisions of "the Sweetheart Gas Bill", 52 Okla. Stat. §541-47, and described the substantive rights enacted by the legislature. The court stated:

> The purpose of the bill, as stated in §541, is to protect the rights and correlative rights of all interest owners of natural gas wells affording each the opportunity to extract and sell their proportionate share of gas.

Maxwell v. Samson, supra at 1170. Section 541 of the legislation concludes, "It is further the intent of this act to protect such owners against discrimination in purchases in favor of one owner as against another." In *Seal v. Corporation Commission*, 725 P.2d 278 (Okla. 1986), the Oklahoma supreme court quoted the concurrent resolution of the Oklahoma Legislature condemning the predatory and

discriminatory practices in sales of gas that precipitated passage of "the Sweetheart Gas Bill." Referring to the legislation, the court stated:

> The Act differs with all previous legislation in that it is directed towards producers rather than purchasers and towards co-owners within a single well as opposed to owners of interests between wells in a common source of supply. Moreover, the Act entitles each owner to share ratably in the revenues generated by the sale of production and creates a type of cotenancy property interest in such proceeds.

The legislation included the recovery of threefold damages as an element of the substantive right created by the statute for persons such as the Maxwells who were not receiving any benefit from their ownership interest in the well from which gas was being sold. The treble damages provision served not only as a penalty for violation of the statute, but also as encouragement to working owners to exercise their rights under the statute and thereby help reform the discriminatory practices that were the subject of the legislation.[1]

The legislation became effective in May of 1983, the year the Kinnikin well was drilled. The Maxwells' lawsuit against Samson was filed in March 1987 and tried in May 1988. The Maxwells substantive rights are governed by the law in effect during that period, not the law as amended in

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[1]*See also Rodebush v. Okl. Nursing Homes, Ltd.*, 867 P.2d 1241, 1247 (Okla. 1993) in which the Oklahoma supreme court stated that a plea for punitive damages is an element of recovery of the underlying cause of action.

1992.[2] Samson's statement that the "New Law" that modified "the Sweetheart Gas Bill" and repealed the treble damages provision applied to all owners and to all producing wells simply is not true. Samson is referring to the Production Revenue Standards Act, 52 Okla. Stat. §§570.1-570.15 which relates to payment of royalties. It has nothing to do with "the Sweetheart Gas Bill" or treble damages. "The Sweetheart Gas Bill" 52 Okla. Stat. §§541-547 was modified by the Natural Gas Marketing Act and recodified as 52 Okla. Stat. §§581.1-581.10. The treble damages provision of "the Sweetheart Gas Bill" is repealed in 52 Okla. Stat. §581.10, but there is nothing in §581.10 or in the Natural Gas Marketing Act as a whole that supports any retrospective application or effect of the statute. Samson's argument to the contrary has no support in Oklahoma law.

In its response to the Maxwells' petition for writ of certiorari, Samson has cited cases from other jurisdictions and four Oklahoma cases that Samson suggests support its argument. The four Oklahoma cases are inapposite because they involved procedural and not substantive matters. "Statutes affecting procedure only, as distinguished from those that affect substantive rights, may be applied retroactively." *Trinity Broadcasting Corp. v. Leeco Oil Co.*, 692 P.2d 1364, 1366 (Okla. 1984). *Trinity Broadcasting* involved the applicable limitations period. *Jeffcoat v. Highway Contractors, Inc.*, 508 P.2d 1083 (Okla. App. 1972), involved the applicability of an amended statute allowing attorney's fees to be taxed as costs.

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[2] "The rights of the parties are to be determined as they existed when suit was commenced." *Gibson Oil Co. v. Kelley*, 169 Okl. 218, 36 P.2d 1111, 1117 (1934). "The elements of damage recoverable by the recognized classes of beneficiaries depend upon the state of the law at the time of death." *Clark v. Jones*, 658 P.2d 1147, 1148 (Okla. 1983).

Oklahoma Water Resources Bd. v. Central Oklahoma Master Conservancy Dist., 464 P.2d 356 (Okla. 1967) involved compliance with conditions precedent which the court determined were merely procedural matters. In the case of *Texas County Irr. & Water v. Okl. Water*, 803 P.2d 1119, 1122 (Okla. 1991) the amended statute involved the method for securing judicial review, a procedural change that the court ruled could be applied retroactively. The court explained that this exception to the general rule that amended statutes are applied prospectively only was first expressed by the court in *Shelby-Downard Asphalt Co. v. Enyart*, 67 Okl. 237, 170 P. 708 (1918), a case which involved the applicability of a venue statute. In *Shelby-Downard*, the court held that a statute which does not impair vested rights, create new rights, or impose new obligations, but instead gives a remedy for enforcing existing rights and obligations, is to be liberally construed, and therefore may be applied retroactively.

The cases from other jurisdictions that Samson has cited involve, for the most part, procedural issues. In any event, they do not construe Oklahoma law and are not relevant to the Maxwells' petition. Samson also cited one case from this Court, *Ewell v. Daggs*, 108 U.S. 143 (1883), which involved a challenge to the Texas usury statute. If the amended statute involved had not been applied retroactively, the usury laws would have made a promissory note that was part of a contractual agreement voidable. This Court ruled that the statute did not affect any element of the rights that inhered in the contract and therefore could be applied retroactively.

The cases cited by Samson to support its argument regarding retroactive application of the repeal of the treble damages provision of the statute on which the Maxwells' claims are based do not involve substantive rights under

Oklahoma law and are not relevant to the issues raised in the Maxwells' petition to this Court. In addition, Samson's citation to *United States v. MacCollom*, 426 U.S. 317 (1976), for its argument that the Maxwells' right to judicial review is not protected by the Fourteenth Amendment to the United States Constitution is inapposite. *United States v. MacCollom* involved the question of whether the Fifth Amendment was violated by the restrictions imposed by a federal statute on the availability to an indigent federal prisoner of a free trial transcript to aid in preparation of a petition for collateral relief under the federal statutes. The case does not speak to the issue before this Court in the Maxwells' petition for writ of certiorari.

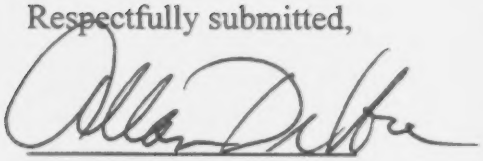
Conclusion

When the court of appeals summarily vacated the judgment of the trial court issued after remand of the case without considering the substantive findings of the trial court in light of the new standard of proof announced by the Oklahoma supreme court in the case, the Maxwells were denied one of the established common law protections against arbitrary decisions which is fundamental to procedural due process of law, the review of the case on the merits. As a result, the Maxwells have been deprived of their cause of action for treble damages without due process of *law. Honda Motor Co., Ltd. v. Oberg*, 114 S.Ct. 2331 (1994); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950).

The Maxwells respectfully request that this Court grant their Petition for Writ of Certiorari to the Court of Appeals, Division No. III, State of Oklahoma.

Dated: September 9, 1996

Respectfully submitted,



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